

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.W.P.No.1593 of 1991
Date of Decision:-03 .08.2010

Chandu Singh and others

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1906 of 1991

Tilak Raj

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1992 of 1991

Ram Karan

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1706 of 1991

Badle and another

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1887 of 1991

Ranjit Singh and others

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.2034 of 1991

Harish Pal and others

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1929 of 1991

Gianinder Singh and another

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.2036 of 1991

Sher Singh

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1863 of 1991

Siri Pal

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1994 of 1991

Jagmal

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1886 of 1991

Abdul Waheed Khan and others

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1705 of 1991

Bhudev Singh and others

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1704 of 1991

Singraj and others

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.1905 of 1991

Smt.Shakuntla and another

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

C.W.P.No.2166 of 1991

Inder Singh

....Petitioner(s)

vs.

The State of Haryana and another

....Respondent(s)

**CORAM:- HON'BLE MR.JUSTICE JASBIR SINGH
HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH**

Present:- Mr.Adarsh Jain, Advocate,
for the petitioners.

Mr.Kamal Sehgal, Addl.A.G., Haryana,
for the respondents.

Augustine George Masih, J.

By this order, we propose to dispose of C.W.P.Nos.1593 of 1991 titled as **Chandu Singh vs. The State of Haryana and another**, 1906 of 1991 titled as **Tilak Raj vs. The State of Haryana and another**, 1992 of 1991 titled as **Ram Karan vs. The State of Haryana and**

another, 1706 of 1991 titled as Badle and another vs. The State of Haryana and another, 1887 of 1991 titled as Ranjit Singh and others vs. State of Haryana and another, 2034 of 1991 titled as Harish Pal and others vs. The State of Haryana and another, 1929 of 1991 titled as Gianinder Singh and another vs. The State of Haryana and another, 2036 of 1991 titled as Sher Singh vs. The State of Haryana and another, 1863 of 1991 titled as Siri Pal vs. The State of Haryana and another, 1994 of 1991 titled as Jagmal vs. The State of Haryana and another, 1886 of 1991 titled as Abdul Waheed Khan and others vs. The State of Haryana and another, 1705 of 1991 titled as Bhudev Singh and others vs. The State of Haryana and another, 1704 of 1991 titled as Singraj and others vs. The State of Haryana and another, 1905 of 1991 titled as Smt.Shakuntla and another vs. State of Haryana and another and 2166 of 1991 titled as Inder Singh vs. The State of Haryana and another, as the acquisition of the land in question is under same notification and is of the same area as also the grounds and reasons praying for release of the land on which residential houses of the petitioners are in existence is also the same. Counsel for the parties have also stated in the same terms. Accordingly, the cases are taken up for hearing together.

Briefly, the facts are that the Government of Haryana, Urban Estate Department, issued a notification dated 2.8.1989 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') proposing to acquire 194.97 acres of land situated in the revenue estate of village Mewla Maharajpur, Hadbast No.4, Tehsil Ballabgarh, District

Faridabad, for development and utilization of the notified land as residential and commercial purposes in Sector 45 of Faridabad under the Haryana Urban Development Authority Act, 1977. Almost all the petitioners in the writ petitions submitted their objections under Section 5-A of the Act. The appropriate Government, on consideration of the same, did not accept all the objections leading to the issuance of a notification under Section 6 of the Act on 1.8.1990 wherein a declaration was issued for acquisition of 184.66 acres of land meaning thereby that 10.31 acres of land was exempted from acquisition. Thereafter, notice under Section 9 of the Act was served on the petitioners on 15.1.1991 leading to the filing of the above-mentioned writ petitions praying therein for release of the constructed houses of the petitioners as had been released qua others for example residential houses constructed in Khasra No.14, 15/1 and 15/2 of rectangle No.50 as also of Chhote Lal and others, who have built their houses on the land comprising khasra No.22/2 of rectangle No.49. Houses constructed by Jamal and others on khasra No.18 of rectangle No.42 have also been exempted from acquisition. The petitioners have contended that they are similarly situated and have their built up houses in the same vicinity, but they have been discriminated against, thereby leading to violation of Article 14 of the Constitution of India. It has been pleaded that their objections have been wrongly rejected whereas the objections of similarly placed persons have been accepted and their residential houses have been released while the houses of the petitioners which are their only residential houses have been acquired. Accordingly, the petitioners have prayed for quashing of notifications dated 2.8.1989 and 1.8.1990 issued under Sections 4 and 6 of the Act respectively, as well as notice dated 15.1.1991 issued under Section

9 of the Act.

State of Haryana has contested the claim of the petitioners; however, in reply to the assertions made by the petitioners with regard to the release of residential houses of similarly placed persons, no specific denial has been made of the assertions, except for that of Jamal and others as it has been stated that they had filed a writ petition in this Court but it has not been averred about any stay granted by this Court or the stage of the case.

As regards the construction in some of the cases, the factum of there being C- class construction before issuance of the notification under Section 4 of the Act, has been admitted, while in some cases it has been pleaded that the acquired land which was having construction on it stands released. In some other cases, it has been stated that there was no construction on the land at the time of issuance of notification under Section 4 of the Act. In two of the writ petitions, no reply has been filed wherein the petitioners have asserted that they have constructed their houses before the issuance of notification under Section 4 of the Act. It would not be out of way to mention here that the respondents have simply pleaded in the reply that the land of the petitioners has been acquired in accordance with the Act but it has not been pleaded that by exempting the land of the petitioners or releasing the same from acquisition, the purpose of the Land Acquisition Act would stand frustrated.

Counsel for the petitioners submits that the petitioners have with great difficulty constructed their residential houses in the land in question and have no other residential houses. If the petitioners are uprooted from the land at this stage, especially when residential houses of

similarly placed persons in the same vicinity stand exempted from acquisition while issuing notification under Section 6 of the Act, they would be rendered homeless. The petitioners also deserve the same treatment and are entitled to the said benefit. The respondents cannot be allowed to discriminate the petitioners without assigning any distinction between the claim of the petitioners and other similarly placed persons qua the same nature of land and structures. They further contend that the residential houses of the petitioners would in no manner impinge upon or infringe the object and purpose of acquisition, as the land is intended to be acquired for the purpose of residential and commercial development and utilization. They further contend that the writ petitions be allowed and the residential houses along with the land be exempted from acquisition.

On the other hand, counsel for the respondents submits that the Government is entitled to acquire the land as well as built up houses. There is no bar with regard to acquisition of residential houses. All provisions as contained under the Land Acquisition Act have been fully complied with. On acquisition of the residential houses and the land of the petitioners, they would be paid adequate compensation in accordance with law and, therefore, they cannot make a grouse in this regard. He has, however, not been able to distinguish the claim of the petitioners for release of their residential houses, in any manner vis-a-vis. the houses of the land owners who have built up their residential houses in khasra Nos.14, 15/1 and 15/2 of rectangle No.50 as also Chhote Lal and others, who have built up their houses on the land comprising khasra No.2 of rectangle No.49, whose land has been exempted from notification under Section 6 of the Act.

We have heard counsel for the parties and have gone through the records of the case.

The above-mentioned writ petitions require to be put in four different categories for proper consideration and effective decision of these cases.

The first category cases are those wherein the petitioners have asserted that they had constructed their residential houses before the issuance of notification under Section 4 of the Act, which fact has been admitted by the respondents in their written statement. These writ petitions are C.W.P.Nos.1593, 1906, 1992, 1706, 1887, 2034 and 1929 of 1991. Out of these cases, in some of the writ petitions, it has been asserted by the respondents that some rooms have been built up after the issuance of the notification under Section 4 of the Act by the petitioners.

The second category of cases are those wherein it has been asserted by the petitioners that they had constructed their residential houses before the issuance of the notification under Section 4 of the Act but no written statement has been filed by the respondents. These are C.W.P.Nos.2036 and 1863 of 1991.

The third category of cases would be cases where the factum of construction of the houses before issuance of the notification under Section 4 of the Act has been admitted by the respondents. However, it has been stated that the constructed area stood already released. C.W.P.Nos.1994, 1886 and 1705 of 1991 belong to this category.

The fourth category are the cases where although it has been asserted by the petitioners in their writ petitions that they had constructed their residential houses before the issuance of the notification under Section

4 of the Act but in the written statement filed by the State of Haryana, it has been asserted that there was no construction on the land when notification under Section 4 of the Act was issued. C.W.P.Nos.1704 of 1991, C.W.P.No.1905 of 1991 and C.W.P.No.2166 of 1991 are the cases in this category.

In none of the cases, replication has been filed by the petitioners and, therefore, the facts as mentioned by the respondents in their written statement have not been controverted by the petitioners.

There can be no dispute with regard to the assertion made by the counsel for the respondents that not only the land but also the structures on the land can be acquired under the Act. However, the decision of the State Government in not granting exemption from acquisition or releasing the land of a land owner arbitrarily and resorting to discriminatory approach qua similarly placed and situated land, would violate Article 14 of the Constitution of India. The case in hand is not the one where it is either the assertion of the petitioners or of the State Government that the exemption which has been granted to the similarly placed land owners, whose residential houses have been released from notification under Section 6 on consideration of the objections filed under Section 5-A of the Act, is in violation of the provisions of the Act or contrary to law with a mala fide intention to provide any benefit to those persons; neither is it a case where due to some mistake or result of a fraud or corrupt method, the land of the land owners has been exempted from notification. There is nothing, even remote to suggest that the land owners whose residential houses have been released have derived the benefit illegally. In such circumstances, the land owners, who are similarly

situated, have a right to receive similar treatment by the State Government. They cannot be discriminated against. All actions of the State have to be fair and for legitimate reasons. The State Government cannot pick and choose some land owners and exempt their land from acquisition and deny the same benefit to other similarly situated land owners. In the present case, the respondent-State has failed to give any explanation, what to say of reasonable one, with regard to the allegations of discrimination qua the residential houses of similarly placed land-owners. The specific pleadings in the writ petitions, mentioning the names of land owners, khasra and rectangle numbers whose residential houses in the same vicinity and area have been exempted/released from acquisition have not been denied by the respondents. Nor any reasons have been assigned for not releasing/exempting the land of the petitioners where their residential houses exist. This apparently leads to the conclusion that the respondent-State had not acted fairly and has discriminated with regard to the petitioners. It is also not the case of the respondents that the release of residential houses of the petitioners would frustrate the purpose of acquisition. It would not be out of way to mention here that the purpose of acquisition of the land is for residential and commercial development and utilization and what is being sought to be exempted by the petitioners are their only residential houses. A plea has been raised by the respondents that the rooms which have been constructed by the petitioners in most of the cases are of C-class construction whereas in some of the cases the same is of B-Class as well. However, that would not be relevant as the Hon'ble Supreme Court in the case of Sube Singh and others vs. State of Haryana and others, (2001) 7 SCC 545 has held that the class of

construction on the land of land-owners to be taken into consideration for release or exemption from acquisition is not based on intelligible differentia and a rationale basis germane to the purpose. Accordingly, the class of construction does not make a difference for considering exemption from acquisition.

As has been held above, the respondent-State has discriminated qua the petitioners in cases where the residential houses were in existence prior to the issuance of the notification under Section 4 of the Act. Accordingly, cases falling in category No.1 i.e. C.W.P.Nos.1593, 1906, 1992, 1706, 1887, 2034 and 1929 of 1991 are allowed. Direction is issued to the respondents in these cases to release the land of the petitioners from acquisition to the extent occupied by the structures which were used for residential purpose only on the date of issuance of notification under Section 4 of the Act along with equal open area for the beneficial enjoyment of the petitioners from their land. It is clarified here that land under the constructed area not being used for residential purpose strictly i.e. for purposes subservient to agriculture like tube-well, cattle shed, fodder store/shed, dairy farming, poultry farming etc. shall not be treated as released as it would violate and not fit in the purpose of acquisition.

As regards category No.2 i.e. C.W.P.Nos.2036 and 1863 of 1991, since no reply has been filed by the respondents, a direction is issued to the respondents to verify the claim of the petitioners and if it is found as per the records that there were constructed residential houses before the issuance of notification under Section 4 of the Act, directions as issued in category No.1 cases shall apply.

As regards category No.3 i.e.C.W.P.Nos.1994, 1886 and 1705 of 1991, these writ petitions deserve to be dismissed on the ground that the constructed area of the residential houses stand already released and, therefore, no directions with regard to the land to the extent occupied by the structures is required to be issued. However, in case equal open area abutting the structure has not been released for the beneficial enjoyment of the petitioners, the same shall be released by the respondents from the land of the petitioners.

However, directions issued in the above categories of cases shall not come in the way of the Authorities in removing the structures, if the same is required for roads, hospitals or other civic amenities or common sites or public utility areas as per the lay-out plan. The respondents shall try as far as possible to retain the structures unless it becomes difficult for them to have a planned development without removing them. It would also be open to the Authorities to make adjustments or re-adjustments of plots for the purpose of planned development and in case it becomes necessary to give an additional area to the petitioners, the petitioners shall be bound to take the additional area and also be bound to pay cost for such area, as is chargeable to other allottees. The petitioners shall also be bound to pay the development charges as is charged from the other allottees.

The afore-stated directions be complied with by the respondents within a period of four months from today. Till then, interim order in their favour shall continue to operate.

As regards category No.4 i.e.C.W.P.Nos.1704, 1905 and 2166 of 1991, these are the cases where specific stand of the

respondents is that there was no construction on the land in question when notification under Section 4 of the Land Acquisition Act was issued. No replication having been filed by the petitioners, the averment made by the respondents is taken to be correct and, therefore, the petitioners cannot claim discrimination qua the constructed residential houses of others. Accordingly, their writ petitions deserve to be dismissed. Ordered accordingly.

Photostat copy of this order be placed in the other connected cases.

(JASBIR SINGH)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

August 03rd, 2010
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Whether referred to Reporters?

Yes/No.